

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5262 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

RAJESH KEDARNATH RAY

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HL JANI, AGP, for the Respondents 1, 2, & 3.

MR BT RAO, ADDL STANDING COUNSEL for respondent
No. 4.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 21-5-98 passed by the District Magistrate, Surat, under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the said Act"), recording a finding that with a view to preventing him

from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary to detain him, has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

Since this petition is required to be allowed on the first contention advanced by Mr. Prajapati learned Advocate for the petitioner that there was an inordinate delay in deciding the representation, the order of detention is vitiated, it is not necessary for me to refer to and deal with the other contentions raised and to renarrate the allegations made in the grounds of detention.

Mr. Prajapati, learned Advocate appearing for the petitioner has invited my attention to the averments made in the petition that the brother of the petitioner had made representation on 1-7-1998. On 2nd July, 1998 a representation , Annexure"D" to the petition, was also made on behalf of the detenu by his Advocate to the detaining authority wherein some supporting material in respect of the laboratory report indicating that the same was in respect of the samples drawn from the tanker of the detenu. It is the grievance of the petitioner that the said representation was not decided earlier.

Mr.P.D.Shah, Under Secretary to the Government , Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed affidavit in reply. In paragraph 7 of the said affidavit, he has stated as under:

"7.With reference to the contentions and averments made in para 3 ground (k), I say that the same are not true and denied hereby. I say that the representation dated 2-7-1998 addressed to the District Magistrate, Surat, was sent to the Food, Civil Supplies and Consumer Affairs Department by a letter dated 21-7-1998. The said representation was received by the Special Branch of Food, Civil Supplies and Consumer Affairs Department on 22-7-1998. The file of the representation was put up by the Special Branch of Food, Civil Supplies and Consumer affairs Department on 23-7-1998 which was cleared by the Under Secretary and Deputy Secretary on 23-7-1998 and put up before the Additional Chief Secretary on 24-7-1998 which was cleared by the Addl Chief Secretary on 24-7-1998 and thereafter the said file of reprersentation was sent to the Hon'ble

Minister of Civil Supplies on 24-7-1998. The said file of representation was cleared by the Hon'ble Minister, Civil Supplies on 24-7-1998. The said file was received back by the Special Branch on 24-7-1998 at 18.20 hours and by a letter dated 27-7-1998 the detenu was informed about the decision taken on the said representation.

In view of the above, it is quite clear that the representation which was received by the State Government was decided promptly and as expeditiously as possible and without any undue delay."

Considering the affidavit in reply, it is amply clear that even though the representation was sent to the District Magistrate on 2-7-1998 by the Advocate for the detenu, it was in fact received by the Civil Supplies Department on 21-7-1998, meaning thereby the said representation was kept lying with the District Magistrate for 19 days for which there is no satisfactory explanation given by the District Magistrate as to why the said representatio was retained by him for a period of 19 days. In view of this, it is not necessary for me to consider the fact of moving the representation from table to table and the explanation submitted by the Under Secretary in that behalf. Since the representation was not forwarded immediately by the District Magistrate and it was retained with him for a considerable long time of 19 days, the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The order of detention dated 21-5-1998 is quashed and set aside. The detenu Rajesh Kedarnath Rai is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. Writ to be sent to Navsari Sub-Jail.

Verified copy